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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

WorldCom Petition for Waiver of the
Supplemental Order Clarification Regarding
UNE Combinations

CC Docket No. 96-98

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FEDERAL COMMUNICATIONS COMMISSION
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REPLY COMMENTS OF
CORECOMM-ATX, INC. AND
E.SPIRE COMMUNICATIONS, INC.

CoreComm-ATX, Inc. and e.spire Communications, Inc. ("Joint Commenters"), by their attorneys, hereby jointly submit their reply comments in the above captioned proceeding concerning WorldCom's Petition for Waiver of the Commission's *Supplemental Order Clarification* addressing access to UNE combinations.¹ As discussed below, Joint Commenters, like the CLEC commenters in this proceeding, have been denied effective access to EELs for the provision of local service. The principal obstacle Joint Commenters have encountered has been the ILECs' refusal to provision EELs where DS-1/DS-3 multiplexing is involved on the transport portion of the EEL. Joint Commenters agree with Net2000 that the *Supplemental Order Clarification* already permits access to EELs in this situation, so long as the CLEC self-certifies that the particular customer's circuit satisfies one of the three "safe harbors" of significant local usage. Contrary to the ILECs' arguments in the initial comments, the presence of DS-1/DS-3

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-83 (2000) ("*Supplemental Order Clarification*").

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multiplexing does not implicate the prohibition on so-called “commingling” of EELs and special access circuits. Accordingly, the Commission should promptly enforce its existing rules and/or grant WorldCom’s petition to the extent it seeks clarification or waiver of the “commingling” rule.²

I. ILECS ARE IMPEDING EELS THROUGH A MISTAKEN RELIANCE ON THE COMMISSION’S “COMMINGLING” RULE

In announcing temporary limitations on the conversion of special access circuits to EELs, the Commission cautioned that its action would not “affect the ability of competitive LECs to use combinations of loops and transport (referred to as the enhanced extended link) to provide local exchange service.”³ Despite this clear intent, each of the Joint Commenters have been denied access to EELs for the provision of local exchange service to their customers, based solely on the ILECs’ misreading of the “commingling” language used in the *Supplemental Order Clarification*.

Joint Commenters each use special access circuits to provide local exchange service to some end user customers of their services. In order to make efficient use of ILEC interoffice transport, Joint Commenters frequently combine DS-1 local loops with other customer DS-1 loops on a multiplexed DS-3 transport circuit. Like Net2000, these DS-3 transport circuits also are used to provide service to switched access customers and for 911, 711 and SS-7 purposes.

² These reply comments address only the so-called “commingling” issue raised by WorldCom. The Joint Commenters express no opinion as to the other issues raised in WorldCom’s Petition, many of which have already been raised in the Commission’s ongoing CC Docket 96-98 proceeding. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”); *see also Supplemental Order Clarification* at ¶ 28 (stating that the Commission will issue a Public Notice in early 2001 seeking more information on EEL combinations).

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, 15 FCC Rcd 1760, ¶ 5 (1999) (“*Supplemental Order*”).

The Joint Commenters have submitted requests for conversion of these circuits to DS-1 EELs, but have been denied the requested conversions.

Citing alleged ambiguities in the *Supplemental Clarification Order*, ILECs argue that the DS-3 transport links are “commingled,” and therefore render the entire DS-1 EELs ineligible for UNE pricing, despite Joint Commenters’ self-certifications that the customer’s circuits satisfy the Commission’s “safe harbors.” In their comments on the WorldCom petition, the ILECs continue to rely on the so-called “commingling” restriction to justify their refusal to provision EELs.⁴ This reliance is misplaced. DS-1/DS-3 multiplexed circuits do not involve the “commingling” of EELs with special access to serve a particular customer. Rather, so long as the customer-specific traffic on the DS-1 satisfies the Commission’s safe harbors, the presence of other traffic carried on a transport circuit is simply irrelevant to the circuit’s eligibility for EEL conversion.

First, the “commingling” restriction is merely a prohibition on the *connection* of an EEL to tariffed special access circuits, not on the use of separate channels on a multiplexed DS-3 circuit. The *Supplemental Clarification Order* states that the “prohibition on ‘co-mingling’ (*i.e.*, combining loops or loop-transport combinations with tariffed special access services)” remains in place.⁵ This statement, however, clearly refers back to the three local usage safe harbors identified earlier in the order. There, the Commission does not use the term “commingling,” but instead described in each option a limitation that the loop-transport combination may not be “connected to the incumbent LEC’s tariffed services.”⁶ None of the three safe harbors restrict a CLEC’s ability to obtain network efficiencies by multiplexing separate circuits on a single

⁴ See, e.g., Qwest Comments at 3; SBC Comments at 4; BellSouth Comments at 3.

⁵ *Supplemental Clarification Order* at ¶ 28.

transport circuit. Indeed, nothing in the three safe harbors limits other uses the CLEC may make of excess capacity on its transport network. Accordingly, for purposes of EEL conversions, these ancillary uses of transport circuits are not relevant at all.

Second, the ILECs are clearly misapplying the safe harbor criteria. In both the *Supplemental Order* and the *Supplemental Order Clarification*, the Commission repeatedly applied its conversion criteria on a customer-by-customer basis. For example, in the *Supplemental Order*, the Commission allowed the conversion of special access to EELs if the CLEC provided “a significant amount of local exchange service . . . to a particular customer.”⁷ Similarly, each of the three safe harbors discussed in the *Supplemental Order Clarification* apply based on the nature of local service provided to a particular “end user.”⁸ Accordingly, the relevant local usage requirements relate to the DS-1 loop portion of the loop-transport combination, not the transport portion. If the criteria applied as the ILECs contend, then every CLEC would be required to provision separate and duplicative transport networks to handle local and “mixed” transport traffic. Such a massive and inefficient restructuring of interoffice transport is not required by or consistent with the policies underlying the safe harbor restrictions in the first place.

Finally, Joint Commenters note that the ILECs are blatantly ignoring the Commission’s self-certification rule for EEL conversions. Even if an ILEC has a legitimate concern about the composition of traffic on particular EELs, it may not refuse to implement the conversion request. The *Supplemental Order Clarification* unequivocally states that a CLEC may *self-certify* its

⁶ *Supplemental Order Clarification*, at ¶ 22 (stating for each safe harbor that “this option does not allow loop-transport combinations to be connected to the incumbent LEC’s tariffed services”).

⁷ *Supplemental Order*, at ¶ 5 (italics added).

compliance and that, upon receipt of this self-certification, “the process by which special access circuits are converted to unbundled loop-transport combinations should be simple and accomplished without delay.”⁹ An ILEC may not refuse the self-certification, and may not require an audit *prior to* provisioning the EEL.¹⁰ The ILECs’ refusal to adhere to these clear instructions is thwarting the use of EELs to provide local service, even though the Commission’s *UNE Remand* rules have been effective for the better part of this year. Joint Commenters urge the Commission to bring its full authority to bear on this urgent situation, whether by declaratory ruling, clarification, waiver or enforcement proceedings.

II. THE ILECS’ TECHNICAL FEASIBILITY ARGUMENTS ARE WITHOUT MERIT

A few of the ILECs have raised technical feasibility objections to the conversion of multiplexed DS-1/DS-3 transport circuits to EELs. These objections are without merit, however.

First, billing for the circuits should not be an issue. As Net2000 points out, ILECs already price and bill different rates for different types of traffic traveling over the same transport circuit.¹¹ For example, because ILECs separate out dissimilar types of traffic when they use OC-48 or higher speeds of transport, they already calculate the rates for different portions of the transport circuit. This method, called “ratcheting,” is commonly used in such circumstances to apportion billing for multiple channels of traffic.

None of the ILEC commenters has provided any evidence to suggest that ILECs cannot bill at UNE prices the portions of a DS-3 transport circuit converted to an EEL. Curiously, SBC

⁸ *Supplemental Order Clarification*, at ¶ 22.

⁹ *Supplemental Order Clarification*, at ¶ 30.

¹⁰ *Id.*, ¶ 31.

¹¹ Net2000 Comments at 5.

claims, but provides no evidence whatsoever, that it will be forced into a massive reshuffling of both its network and personnel in order to convert the circuits.¹² To the extent SBC is implying that a physical restructuring is necessary, the claim is obviously misplaced. The conversion of these circuits involves a billing change only; no provisioning or field work are necessary to accomplish the change.

To the extent SBC is claiming that its billing systems are not capable of “pro-rating” DS-3 circuit cost based upon the percentage of traffic that is local and traffic that is non-local, no such traffic-based pro-rating is necessary.¹³ Joint Commenters do not request that UNE pricing be applied to the entire DS-3 facility, or even that it be applied on a traffic-sensitive basis. Rather, where an individual channel dedicated to an end user is converted to an EEL, only that channel should be billed at UNE rates; the remainder of the DS-3 should continue to be billed at applicable special access rates.

Moreover, conversion of multiplexed DS-1/DS-3 circuits would not require modification of the carrier-customer relationship between the ILEC and the CLEC. Some ILECs argued that that they cannot separately identify and bill the UNE charges for that portion of the circuit that carries local traffic because this would give the ILECs unlawful insight into the CLECs’ business plans by revealing proprietary CLEC information.¹⁴ This would occur, SBC argues, due to the necessary collapse of the “Chinese Wall” between the ILEC’s wholesale and retail units.¹⁵ Joint Commenters envision no circumstance where this concern would apply; the ILECs wholesale

¹² SBC Comments at 7.

¹³ SBC Comments at 7-8. In fact, SBC states that it could take “months” to compile information on how much it would cost to separate the charges. Presumably, SBC would like to continue overcharging CLECs during this investigation.

¹⁴ SBC Comments at 1, 7.

¹⁵ SBC Comments at 7.

units would have the same level of contact with CLECs whether the circuit were special access or an EEL.

IV. CONCLUSION

ILECs continue to use the "commingling" rule as an excuse not to convert legitimate local exchange combinations to EELs. The Commission should promptly grant the WorldCom petition to the extent it seeks clarification or waiver of the commingling requirement, and should order ILECs to provide EELs in these circumstances.

Respectfully submitted,

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